IN THE SUPREME COURT OF THE STATE OF DELAWARE

TERRANCE J. ELLIS,	§	
	§	No. 462, 2008
Defendant Below,	§	
Appellant,	§	Court Below—Superior Court
	§	of the State of Delaware in and
v.	§	for Kent County
	§	
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	Cr. ID No. 0709029818
Appellee.	§	

Submitted: March 2, 2009
Decided: June 1, 2009

Before **STEELE,** Chief Justice, **JACOBS** and **RIDGELY,** Justices.

O R D E R

This 1st day of June 2009, upon consideration of the brief and motion to withdraw filed by the appellant's counsel pursuant to Supreme Court Rule 26(c) ("Rule 26(c)"), the State's response, and the appellant's additional points, it appears to the Court that:

(1) The record reflects that during the evening of September 22, 2007, police officers set up a sobriety checkpoint on Route 14 in Milford, Delaware. At about 11:30 p.m., police officers observed a small, black vehicle drive through the checkpoint without stopping. Several police officers yelled for the vehicle to stop, but it did not.

(2) Milford Police Sergeant Geoffrey David testified that he stepped in front of the approaching vehicle with his arms up in an attempt to stop it. Instead of slowing, however, the vehicle accelerated, forcing Sgt. David to step back to avoid getting run over. According to Sgt. David, as the vehicle sped past him, his outstretched hand touched the vehicle's windshield.

(3) As the vehicle sped away, police officers jumped into police cars and gave chase. After several miles, the vehicle slowed, and a suspect jumped from the driver's side of the vehicle and fled into a nearby field.

(4) The suspect, Terrance J. Ellis, was apprehended by police officers after a short foot chase. One of the officers noted an odor of alcohol coming from Ellis. Ellis told the officer that he had consumed two beers at a friend's house.

(5) On May 8, 2008, after a two-day jury trial in the Superior Court, Ellis was convicted *in absentia* of Reckless Endangering in the Second Degree (as a lesser-included offense of Reckless Endangering in the First Degree), Failure to Stop on Command of a Police Officer, Resisting Arrest, Driving After Judgment Prohibited and Driving While Suspended or Revoked. The jury found Ellis not guilty of Driving Under the Influence.

(6) On the first day of trial, Ellis left the courtroom at the lunch recess and did not return for the remainder of the trial. After a short delay to try to locate Ellis, the Superior Court proceeded with the trial in Ellis' absence. Ellis was apprehended a little over a month later.

(7) On August 12, 2008, the trial judge sentenced Ellis to a total of seven years and seven months at Level V imprisonment, suspended after seven months and completion of the Greentree Program for decreasing levels of probation. This appeal followed.

(8) The standard and scope of review applicable to the consideration of a motion to withdraw and an accompanying brief under Rule 26(c) is twofold. First, the Court must be satisfied that defense counsel ("Counsel") has made a conscientious examination of the record and the law for claims that could arguably support the appeal.[1] Second, the Court must conduct its own review of the record and determine whether the appeal is so devoid of at least arguably appealable issues that it can be decided without an adversary presentation.[2]

(9) Counsel asserts that, based upon a complete and careful examination of the record, there are no arguably appealable issues. By

[1] *Penson v. Ohio*, 488 U.S. 75, 83 (1988); *McCoy v. Court of Appeals of Wisconsin*, 486 U.S. 429, 442 (1988); *Anders v. California*, 386 U.S. 738, 744 (1967).
[2] *Id.*

letter, Counsel informed Ellis of the provisions of Rule 26(c) and provided him with a copy of the motion to withdraw and the accompanying brief and appendix. Counsel also informed Ellis of his right to supplement the brief and to respond to the motion to withdraw. Ellis has submitted the following claims for the Court's consideration.

(10) Ellis alleges that Counsel had a conflict "from the pas[t], due to another case." Without specific allegations of prejudice, however, Ellis' claim is without merit.[3]

(11) Ellis claims that Counsel ordered a presentence report without his consent. The claim is without merit. A criminal defendant is not required to consent to the preparation of a presentence report.[4]

(12) Ellis alleges that he told Counsel prior to the lunch recess that he wanted to proceed *pro se*. His subsequent voluntary absence from the trial, however, resulted in a waiver of that right.[5]

(13) Ellis claims that the Superior Court erred when denying his requests for a continuance and for the appointment of new counsel. Ellis' claims are without merit. The record does not reflect that Ellis had a conflict

[3] *See Williams v. State*, 2003 WL 21755844 (Del. Supr.) (finding no error on the face of the record when defendant failed to support conflict of interest claim with specific allegations).
[4] Del. Code Ann. tit. 11, § 4331(a) (Supp. 2008).
[5] Del. Super. Ct. Crim. R. 43(b).

with Counsel that required the appointment of new counsel and/or that the Superior Court abused its discretion when denying Ellis' request for a continuance.[6]

(14) Ellis claims that the transcript of his sentencing "was not printed as the way things [were] said." Also, he contends that the Superior Court was "biased" against him and "tried to sentence him" on the charge of Driving Under the Influence. Ellis' claims are not supported by the sentencing transcript.

(15) Ellis contends that the Superior Court sentenced him outside of SENTAC guidelines on the charge of Failure to Stop on the Command of a Police Officer. Ellis' claim is unavailing. In Delaware, there is no constitution or statutory right to challenge a sentence solely on the basis that it exceeds SENTAC sentencing guidelines.[7]

(16) Ellis attempts to discredit witnesses' testimony on the basis that certain factual assertions made by the witnesses were not included in the police report. Ellis' claims are unavailing. There is no requirement that facts testified to at trial must appear in a police report.

---

[6] *Taylor v. State*, 1991 WL 57087 (Del. Supr.) (citing *Riley v. State*, 496 A.2d 997, 1018 (Del. 1985)).

[7] *Dennison v. State*, 2006 WL 1971789 (Del. Supr.) (citing *Mayes v. State*, 604 A.2d 839, 844-46 (Del. 1992)).

(17) Ellis contends that the Superior Court erred when giving the jury an instruction on "flight." A flight instruction is proper when there is evidence of flight from the scene of a crime or evasion of arrest following the commission of a crime.[8] In this case, Ellis was allegedly the operator of the black vehicle that led police on a high speed chase after failing to stop at a sobriety checkpoint and nearly running over Sgt. David. The record reflects a clear basis for a jury instruction on flight.

(18) The Court has reviewed the record carefully and has concluded that Ellis' appeal is wholly without merit and devoid of any arguably appealable issue. We are satisfied that Counsel made a conscientious effort to examine the record and properly determined that Ellis could not raise a meritorious claim in this appeal.

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely
Justice

[8] *Thomas v. State*, 467 A.2d 954, 958 (Del. 1983).